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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 41147
Plaintiff-Respondent,)	
)	Ada Co. Case No.
vs.)	JV-2012-52
)	
CONNER G. SPIES,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

HONORABLE KATHRYN A. STICKLEN
District Judge

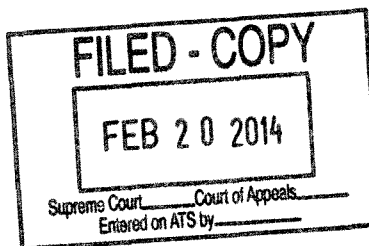
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STATEMENT OF THE CASE

Nature Of The Case

Connor Spies appeals from the district court's appellate decision reversing the magistrate court's order to suppress evidence and remanding the case for further proceedings.

Statement Of The Facts And Course Of The Proceedings

During a routine traffic stop on July 15, 2011, officers found marijuana and drug paraphernalia in Spies' possession. (R., p.26.) Because Spies was under the age of 18 at the time of the traffic stop, the state charged him as a juvenile with violating curfew, destruction or concealment of evidence, possession of paraphernalia, possession of marijuana, and resisting and obstructing arrest. (R., pp.5-7.) Spies moved to suppress the evidence, arguing that the search and seizure violated his constitutional rights. (R., pp.25-28.) The magistrate held a hearing on the motion (R., pp.33-40) and made the following factual findings, which were later adopted by the district court:

1. At approximately 1:10 am on July 15, 2011, Officer Hoodman stopped the Former Juvenile's vehicle near the intersection of Ustick and Meridian Roads in Ada County, Idaho;
2. The basis of the stop by Officer Hoodman was for suspicion of an intoxicated or impaired driver;
3. Officer Hoodman observed the Former Juvenile's vehicle on two (2) occasions northbound on Ustick Road merge from the far right temporary lane into the main lane of travel by 'swerving' abruptly and without using turn signals; However, Officer Hoodman testified he did not base the stop of the subject vehicle on the lack of turn signals;
4. Officer Hoodman explained he was also suspicious of the driver's condition due to the early morning hour and that, in his experience,

people start leaving bars and tend to 'hug' the right side of the lane of travel;

5. Both the main lane of travel and the merge lane were marked by reflective tabs, three to four inches in height;
6. The main lane of travel, northbound was marked on both sides with yellow tabs, the merger lane was marked with yellow tabs;
7. The Former Juvenile was otherwise operating his vehicle in compliance with the motor vehicle laws;
8. There were some street lights near the intersection and sidewalks at the intersections of Ustick/12th and Ustick/Blairmore;
9. The sky was dark and clear during the time of the encounter and stop....

(R., pp.45-46; 96-97.) The magistrate, finding no basis for the traffic stop, ultimately granted the suppression motion (R., pp.44-48) and dismissed the case (R., p.51).

The state appealed the magistrate's decision to the district court. (R., pp.53-54.) After briefing from the parties (R., pp.66-78; 88-94), the district court reversed the magistrate's ruling and remanded for further proceedings, holding that the traffic stop was objectively reasonable due to Spies' failure to signal. (R., pp.96-103.) Spies filed a timely notice of appeal. (R., pp.105-06.)

ISSUES

Spies states the issues on appeal as:

1. Was the Magistrate correct in ruling that the failure to use a turn signal was not and need not be included in the basis of the stop.
2. Was the Magistrate's finding that the Former's [sic] Juvenile's driving fell with [sic] the broad range of normal driving behavior supported by substantial evidence.
3. Is Idaho Code § 49-808 unconstitutional as applied to Connor's driving conduct.

(Appellant's brief, p.2.)

The state rephrases the issue as:

Has Spies failed to show error in the district court's appellate decision reversing the magistrate court's order suppressing evidence and remanding for further proceedings?

ARGUMENT

Spies Has Failed To Show Error In The District Court's Appellate Decision Reversing The Magistrate's Order To Suppress Evidence

A. Introduction

In the magistrate court below, Spies filed a motion to suppress evidence (R., pp.25-28), which was granted by that court (R., pp.44-48). The state appealed to the district court (R., pp.53-54), and the district court reversed (R., pp.96-103). On appeal, Spies argues that the district court erred in its determination. (Appellant's brief, pp.3-9.) Application of the correct legal standards to the facts of this case, however, shows no error by the district court.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2005)). When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007).

C. The Traffic Stop Was Objectively Reasonable

Below, Spies argued that there was no legitimate basis for his traffic stop. (R., pp.92-94.) The Fourth Amendment of the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against

unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. While routine traffic stops by police officers implicate the Fourth Amendment’s prohibition against unreasonable searches and seizures, the reasonableness of a traffic stop is analyzed under Terry v. Ohio, 392 U.S. 1 (1968), because a traffic stop is more similar to an investigative detention than a custodial arrest. Delaware v. Prouse, 440 U.S. 648, 653 (1979); State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). “An investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity.” Sheldon, 139 Idaho at 983, 88 P.3d at 1223 (citing Terry, 392 U.S. at 21; United States v. Cortez, 449 U.S. 411, 417 (1981)). Therefore, when an officer observes a traffic violation, initiating a traffic stop is reasonable. Whren v. United States, 517 U.S. 806, 810 (1996).

In this case, Officer Hoodman testified that he observed Spies repeatedly fail to engage his turn signal before merging from terminating turn lanes back to the continuing lane of travel. (Tr., p.10, L.9 – p.12, L.12.) The magistrate specifically found that Spies moved from the temporary lane of travel to the continuing lane “without using turn signals.” (R., p.45-46.) Signaling when merging left or right from one lane of travel to another is required by Idaho Code § 49-808. The traffic stop was therefore legitimate, based on Officer Hoodman’s actual observation of Spies’ traffic violation. Because the traffic stop was legal, the district court correctly reversed the magistrate’s order suppressing the evidence.

On appeal, Spies argues that the stop must be justified by the officer’s subjective rationale for conducting the traffic investigation. (Appellant’s brief, pp.3-5.) That is not

the correct legal standard. Rather, whether an officer has reasonable suspicion to detain a suspect is an objective test not dependant on the subjective beliefs of an individual officer. State v. Willoughby, 147 Idaho 482, 489, 211 P.3d 91, 98 (2009) (citing Deen v. State, 131 Idaho 435, 436, 958 P.2d 592, 593 (1998)). Spies' failure to signal while repeatedly swerving between lanes is an objective violation of Idaho Code § 49-808. Whether he subjectively believed so or not, as a matter of law—and as correctly concluded by the district court—Officer Hoodman objectively had reasonable suspicion to stop Spies for his traffic violation.

Even if the standard required the Court to review Officer Hoodman's *subjective* basis for pulling over Spies (which it does not), there were sufficient facts to conclude that the officer had reasonable suspicion to enforce the traffic stop. Officer Hoodman testified that he pulled over Spies for suspicion of driving while intoxicated. (Tr., p.6, Ls.21-25.) Officer Hoodman observed Spies driving down temporary lanes of travel and abruptly swerving to the other lane of travel when those temporary lanes ended. (Tr., p.11, L.2 – p.12, L.5.) As correctly noted by the district court, if swerving within the same lane of travel is abnormal driving behavior, see State v. Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996), then swerving back and forth between two lanes of travel undoubtedly constitutes abnormal driving behavior. (R., pp.102-03.) Officer Hoodman also explained that, in his experience, intoxicated drivers leave bars late at night and hug the right side of the lane of travel, as Spies was doing. (Tr., p.13, Ls.8-25.) An officer may rely on his experience when forming reasonable suspicion. See State v. Roe, 140 Idaho 176, 180, 90 P.3d 926, 930 (Ct. App. 2004) ("An officer may draw reasonable inferences from the facts in his or her possession, and those

inferences may be drawn from the officer's experience and law enforcement training.") Spies' hugging the right side of the road late at night, which indicated to Officer Hoodman that Spies could be drunk, coupled with Spies' abruptly swerving from the right side of the road to the continuing lane of travel, gave Officer Hoodman sufficient reasonable suspicion to pull over Spies for driving while intoxicated.

Spies next argues that Idaho Code § 49-808 is void for vagueness and contends that his not using "a turn signal should not ... be considered a 'failure' to do so" because "[h]e was not required to do so by a constitutionally valid statute." (Appellant's brief, pp.5-7.) Spies' argument fails. First, this Court should decline to address the issue. "Idaho case law requires that the party asserting an issue seek a specific ruling on that issue at each stage of the appeal." Rammell v. Idaho State Dept. of Agriculture, 147 Idaho 415, 421, 210 P.3d 523, 529 (2009) (superseded on other grounds by statute). "This Court will not address an issue not raised before the district court sitting in its appellate capacity." Montgomery v. Montgomery, 147 Idaho 1, 10, 205 P.3d 650, 659 (2009). Spies never raised a "void for vagueness" challenge to Idaho Code § 49-808 before the district court sitting in its appellate capacity. The issue is therefore not preserved and this Court should not address it on appeal.

Second, even if the issue were preserved, Spies' argument fails. Though Spies' Due Process claim might arguably constitute a defense to the traffic infraction of failing to signal, it is entirely irrelevant to the Fourth Amendment inquiry of whether Officer Hoodman had an objectively reasonable basis to enforce a traffic stop. As Spies has failed to cite any authority for his underlying premise that an officer may not detain a suspect upon reasonable suspicion that he or she has committed a crime merely

because that suspect *may* have an affirmative defense to that crime, this argument should not be considered on appeal. See State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996).

Finally, even on the merits, Spies' argument fails. The constitutionality of a statute is a question of law over which the Court exercises free review. Doe I v. Doe, 138 Idaho 893, 903, 71 P.3d 1040, 1050 (2003). "A statute may be void for vagueness if it fails to give adequate notice to people of ordinary intelligence concerning the conduct it proscribes, or if it fails to establish minimal guidelines to govern law enforcement or others who must enforce the statute." State v. Fluewelling, 150 Idaho 576, 578, 249 P.3d 375, 377 (2011) (quoting State v. Korsen, 138 Idaho 706, 712, 69 P.3d 126, 132 (2003)). "A statute may be challenged as unconstitutionally vague on its face or as applied to a defendant's conduct." Korsen, 138 Idaho at 712, 69 P.3d at 132. "A 'facial vagueness' analysis," however, "is mutually exclusive from an 'as applied' analysis" Id. (citation omitted). "It has long been held that a statute should not be held void for uncertainty if any practical interpretation can be given the statute." State v. Larsen, 135 Idaho 754, 756, 24 P.3d 702, 704 (2001).

Spies specifically "urges the court to consider" a facial challenge to Idaho Code § 49-808. (Appellant's brief p.6.) "For a facial vagueness challenge to be successful, the complainant must demonstrate that the law is impermissibly vague in all of its applications. In other words, the challenger must show that the enactment is invalid *in toto*." Korsen, 138 Idaho at 712, 69 P.3d at 132 (quotations and citation omitted). The Court held in Burton v. Department of Transportation that, in circumstances where one of the two lanes of travel ends and the other continues, Idaho Code § 49-808 "plainly

requires a signal because a driver in the terminating lane must change lanes in order to continue travel on the highway, and changing lanes constitutes a move to the left or right.” 149 Idaho 746, 749, 240 P.3d 933, 936 (Ct. App. 2010). The statute is therefore not invalid *in toto* and Spies’ facial challenge fails.

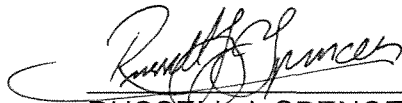
Spies also asserts that Idaho Code § 49-808 is “at least void as applied to [his] driving.” (Appellant’s brief, p.6.) “To succeed on an as applied vagueness challenge, a complainant must show that the statute, ‘as applied’ to the defendant’s conduct, failed to provide fair notice that the defendant’s conduct was proscribed or failed to provide sufficient guidelines such that the police had unbridled discretion in determining whether to arrest him.” Korsen, 138 Idaho at 712, 69 P.3d at 132. Spies does not support his naked assertion that the statute is void as applied to his conduct and so has failed to show that the statute failed to provide adequate notice that swerving back and forth between terminating lanes and a continuing lane of travel without using a signal was proscribed, or that it failed to provide sufficient guidelines for enforcement. Furthermore, this is the very situation which, as noted above, the Court in Burton held “plainly requires a signal” under Idaho Code § 49-808. 149 Idaho at 749, 240 P.3d at 936. Spies’ as-applied challenge also fails.

Officer Hoodman observed Spies repeatedly violate Idaho Code § 49-808 by failing to signal before merging from terminating lanes of travel back to the continuing lane of travel as plainly required by Idaho Code § 49-808. Based on this actual observation of an actual violation, Officer Hoodman had reasonable suspicion to pull over Spies. The traffic stop was therefore valid, and the district court correctly reversed the magistrate’s order suppressing the evidence.

CONCLUSION

The state respectfully requests that this Court affirm the district court's appellate decision reversing the magistrate's order suppressing evidence and remanding this case for further proceedings.

DATED this 20th day of February, 2014.



RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 20th day of February, 2014, served two true and correct copies of the attached RESPONDENT'S BRIEF by placing the copies in the United States mail, postage prepaid, addressed to:

N. GENE ALEXANDER
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